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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,729	11/24/2003	Gerard A. Rutigliano	893.0011USU	2758

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/720,729	Applicant(s) RUTIGLIANO ET AL.	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL OFFICE ACTION AFTER RCE

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2 MAR 2006 has been entered.

Claim Rejections - 35 U.S.C. § 112, first paragraph

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention and the specification, as originally filed, does not provide support for the invention as is now claimed.

In view of the claim amendments filed 2 MAR 2006, the specification is now considered inadequate in describing the claimed invention. Regarding the claim language "and said elongated portion is centered about said first axis" (claim 1 as amended); "wherein said first handle has an elongated portion that is centered about said first axis" (claim 8 as amended); and "wherein said second handle is elongated

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about an axis, and said first handle has an elongated portion that is at least substantially perpendicular to said axis and is centered about said axis" (claim 13 as amended), it is unclear if Applicant is attempting to recite that the first handle has a length that is bisected by the axis formed by the body and drive shaft (see the view of instant Fig. 1 but note Figure 1 does not appear to show this relationship) or that a center axis of the first handle is coplanar with the axis formed by the body and drive shaft (i.e., the first handle is not laterally offset from the axis formed by the body and drive shaft as seen in the view of instant Figure 3 - note first handle 20 is centered left to right along the axis of the body and drive shaft as seen in Figure 3). Note this subject matter is not adequately set forth in the originally filed specification so the examiner cannot ascertain exactly what Applicant is attempting to claim. The specification at page 7 does recite that "[s]econd proximal end 32 preferably intersects first handle 20 at or about first central portion 24" but this is far removed from the claimed subject matter relating to particular axes. Since the specification fails to adequately describe this claimed feature, the particular relationship between the first handle and the recited axis in the respective independent claims is unclear.

In further view of the claim amendments filed 2 MAR 2006, claim 1 now recites "said first handle has a portion elongated along a second axis that is oriented at least substantially parallel to said working surface". This subject matter is not supported by the originally filed specification and is not reasonably supported by the drawing Figures. Note the first handle 20 defines an axis that is clearly angled at a small but significant acute angle with respect to working surface 50. Figures 1 and 3 fail to depict any

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surface of the first handle 20 being parallel to the surface 50. If the first handle 20 were indeed oriented parallel to surface 50, no top portion of the handle 20 would be visible in Figure 3 yet Figure 3 shows a large portion of the top surface of the first handle 20. This suggests that the handle 20 defines an axis that is not parallel to the surface 20, in direct contraction to the claimed subject matter. Claim 1, as amended, therefore involves new matter.

Likewise, with regard to claim 8, there exists no handle in the instant application that is oriented parallel or substantially parallel to the working surface 50. Furthermore, the limitation in amended claim 8 drawn to "and a second handle of said two or more handles is at least substantially oriented perpendicular to said working surface" is also not supported by the originally filed specification and is not reasonably supported by the drawing Figures. Note the second handle 30, as seen in Figure 1, is clearly disposed at a non-perpendicular angle with respect to surface 50 and forms an acute angle with respect to the axis of the shaft 14. Claim 8, as amended, therefore involves new matter.

With further regard to claim 13, the axis defined by second handle 30 and the axis or elongated portion defined by first handle 20 appear to intersect at an obtuse angle significantly greater than 90 degrees rather than being oriented "substantially perpendicular" as now claimed in claim 13. Claim 13 thus also involves new matter.

The examiner remains mystified why the claims continue to recite structure with respect to a surface forming no part of the apparatus (namely the working surface, which in use would of course be a variable). It may be more fruitful for Applicant to

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relate the orientation of the handles and any other structure of the blender strictly to existing structure of the blender such as the clearly depicted axis formed by drive shaft 14.

4. Claims 1-10 and 13-20 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

5. Claims 1-10 and 13-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

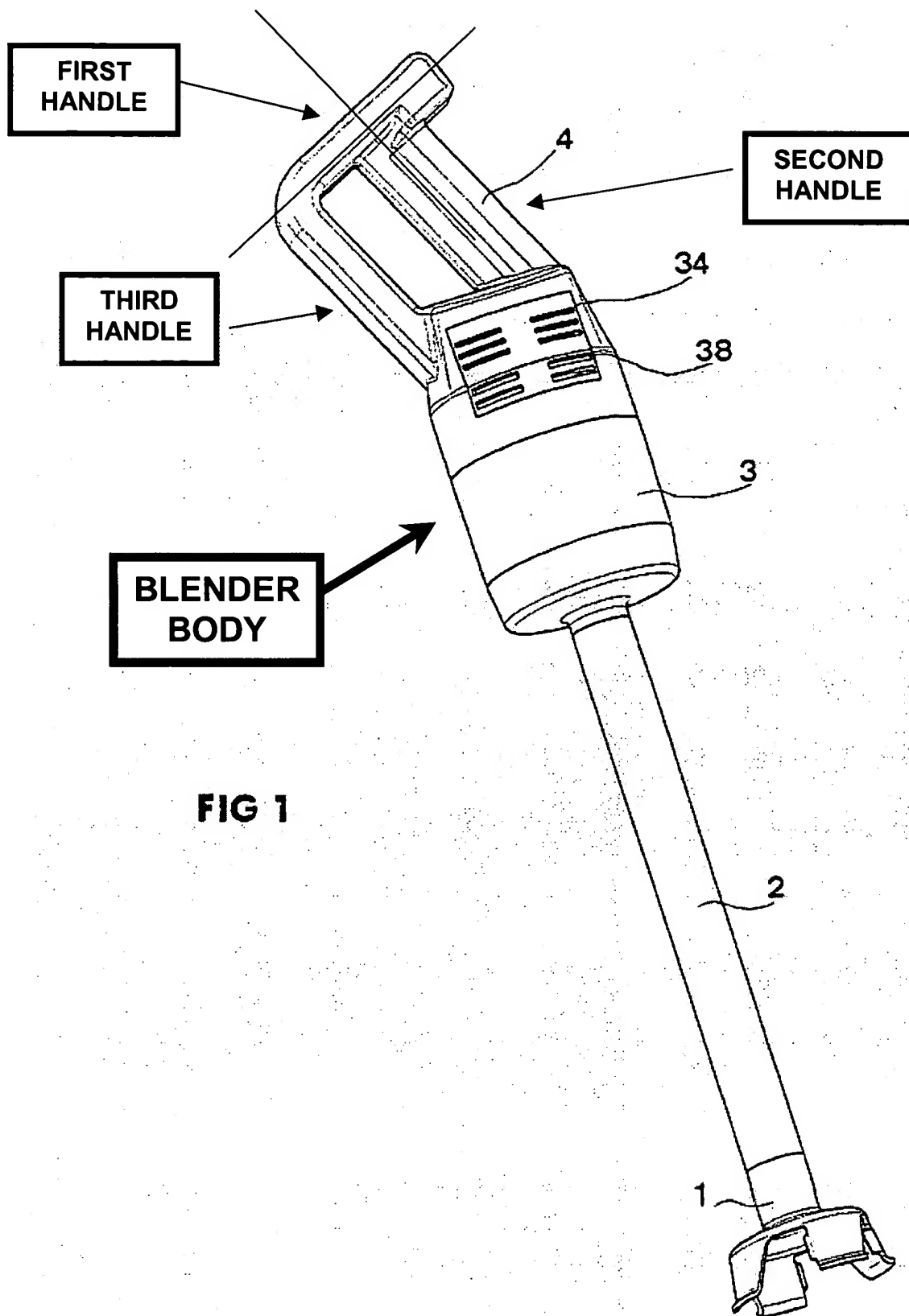
7. **Claims 13-17 and 19-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Calange (US 6,193,404 B1).**

The patent to Calange clearly discloses a blender as seen below comprising a body (the housing seen in Fig. 1) for containing a drive motor 32, the body 3 having a shaped outer surface, an elongated first handle, an elongated second handle, and an elongated third handle as labeled below, the handles accommodating the palm of a user's hand; a drive shaft 5 operatively connected to said drive motor 32, and a tool 13

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operatively connected to said drive shaft; wherein said first handle is elongated with a proximal end portion, a central portion and a distal end portion; wherein said proximal end and said distal end enable an operator's hand to easily grasp or wrap thereabout; a central portion of the top section of the first handle is connected to the second handle 4 (Fig. 1); wherein said second handle 4 can be handled by the operator to stabilize the immersion blender during operation; the first handle having a section disposed on a side of said body 3; the handles being capable of being disposed at any orientation with respect to a working surface; the third handle 3 is disposed on a side of the body (Fig. 1). As seen below, the first handle is disposed in a substantially perpendicular orientation with respect to the second handle and intersects the second handle at a center region thereof.

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Response to Amendment

8. Applicant's arguments filed 2 MAR 2006 have been fully considered but they are not deemed to be persuasive.

Applicant is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ

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385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the references disclose each and every element set forth in

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the broad claims and how the pending claims read on the disclosure of the references, hence the rejections are still considered proper.

The examiner believes any part of a blending device that can be grasped by a user (such as elements denoted as handles, any projections from the motor housing, or an outer surface of the motor housing itself, etc.) can be considered a "handle" within the broad scope of the pending claims. Simply because an element has another function, there is no evidence that such an element could not be used or is wholly incapable of being implemented as a handle by an operator. With this not unreasonable approach, at least four handles can be identified on the device of Calange. Accordingly, with further regard to Calange, the multiple elements on the top of housing 3 can be considered discrete handles as pictured above, contrary to Applicant's assertion.

With regard to the intended use language of the claims and the manner in which the blender is manipulated by a user (e.g., see claim 13), such intended uses have not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641.

Exemplary claim language such as "wherein said second handle can be handled by the operator to stabilize the immersion blender during operation" (claim 6) and "wherein said body has a first handle to facilitate pivoting the blender with respect

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to a working surface, a second handle to facilitate moving the blender laterally with respect to said working surface, and a third handle to facilitate stabilizing the blender during operative use” are merely statements of intended use which imparts no structure to the claimed apparatus. It is well settled that the intended use of an apparatus is not germane to its patentability. *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967). Furthermore, there is no reason to believe that the multiple handles of the prior art blenders are wholly incapable of being manipulated in the claimed manners.

Applicant relies heavily on the amendatory claim language in an attempt to define over the prior art, yet much of this language is inadequately supported or deemed new matter as explained above. New matter cannot be the basis for patentable subject matter.

In conclusion, the amendments made in the instant application are not deemed of a substantive nature to define over the prior art or avoid 35 U.S.C. 112, first paragraph and thus the rejections are considered proper.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles" followed by a stylized flourish.

Charles E. Cooley
Primary Examiner
Art Unit 1723

30 May 2006